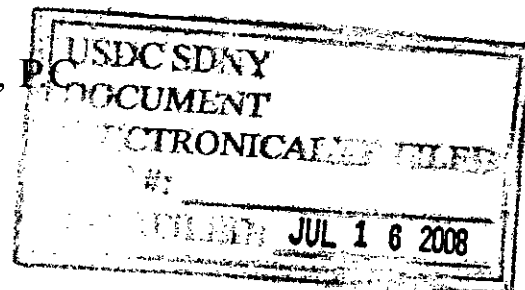


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E. DAVID IRWIN*
STEPHEN LEWIN
EDWARD COHN
JOHN LEWIN

July 10, 2008

Of Counsel:
RICHARD SELTZER*

*Admitted NY and FL Bars
■Admitted NJ Bar

ANDREW LUFTIG

Judge Laura Taylor Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

MEMORANDUM ENDORSED

The ECF system provides notice of the entry of this Order to each party that has both entered an appearance in this case and registered with ECF. The ECF-registered attorneys are responsible for providing notice to any co-counsel whose e-mail addresses are not reflected on the ECF docket for this case, and Plaintiff's counsel, upon receiving notice of this Order, is hereby ordered to fax or otherwise deliver promptly a copy to all parties who are not represented by ECF-registered counsel. A certificate of such further service shall be filed within 5 days from the date hereof. Counsel who have not registered for ECF are ordered to register immediately as filing users in accordance with the Procedures for Electronic Case Filing.

**Re: Capponi v. Murphy et al.
08Civ.4449 (LTS) (DFE)**

Dear Judge Swain:

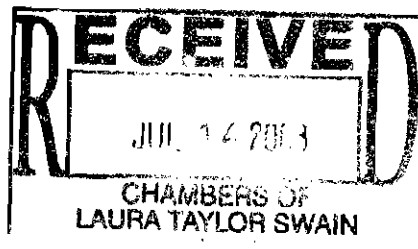
The undersigned represents the plaintiff, John B. Capponi, as Administrator of the Estate of Louise Theresa Capponi.

Notwithstanding the fact that each of the four defendants have been served with an Amended Summons and Amended Complaint, none of the defendants have filed and/or served an Answer to date.

Therefore at this time since each of the defendants are in default, it is requested that the plaintiff be granted permission to move for a default judgment against each of the defendants.

The underlying action involves distributions from Willow Lane Associates LP, a limited partnership in which Louise Theresa Capponi had an equity interest of no less than twenty (20%) percent.

As a general partner of Willow Lane Associates LP, Joann Murphy swore under oath in an affidavit on August 9, 2005, that as a result of the activities of Willow Lane Associates LP, Louise Theresa Capponi was entitled to a distribution of \$216,000.00. Joann Murphy further stated that she gave a check in the sum of \$216,000.00 to defendant, Dennis Capponi, to hold for the benefit of his mother, Louise Theresa Capponi. Joann Murphy further swore in her affidavit that the \$216,000.00 was deposited into an interest bearing account at defendant, Country Bank.



On or about August 20, 2005, defendant Dennis Capponi swore under oath that he received a check made payable to Louise Theresa Capponi in the sum of \$216,000.00, but that he did not give it to his mother Louise Theresa Capponi.

Louise Theresa Capponi died on March 11, 2007 and on May 16, 2007, her son John B. Capponi was granted Letters of Administration by the Circuit Court of the County of Clarke in the state of Virginia.

As the Administrator of the Estate of Louise Theresa Capponi, John B. Capponi commenced this action for conversion and other related relief due to the failure of the defendants to pay monies rightfully belonging to Louise Theresa Capponi or to her estate.

Defendant Country Bank was personally served with a copy of the Amended Summons and Amended Complaint on June 4, 2008. Defendant, Dennis Capponi was personally served on June 11, 2008. Defendants Joann M. Murphy and Willow Lane Associates LP were personally served on June 19, 2008. Copies of each of the affidavits of service are annexed hereto.

Notwithstanding the fact that I have never spoken to or communicated with Stewart A. McMillan, Esq., on June 23, 2008, the undersigned received a stipulation from Mr. McMillan in which he stated that he represented all of the defendants and that he was seeking an adjournment until July 7, 2008. Mr. McMillan signed the stipulation prior to sending it to the undersigned. Upon receiving the stipulation the undersigned called Mr. McMillan's office and left a message for him. However, Mr. McMillan has never returned that phone call.

Nevertheless, to date none of the defendants have answered and they are all in default. Therefore the undersigned is requesting permission to move for a default judgment against all defendants.

Pursuant to Your Honor's rules this letter is being copied to each of the defendants, as well as Stewart McMillan, Esq. Thank you for your courtesy and in the event you have any questions regarding this matter, please feel free to contact me.

Very truly yours,

IRWIN, LEWIN, COHN & LEWIN, P.C.

By:

Edward Cohn

The foregoing request is denied, without prejudice, in light of the subsequent correspondence regarding communications between counsel as to the service of the complaint and responses thereto.

EC:tlb

Cc: Stewart A. McMillan, Esq.
McMillan, Constable, Maker & Perone, LLP
2180 Boston Post Road
Larchmont, New York 10538

SO ORDERED.

[Signature]
LOR SWAIN
STATES DISTRICT JUDGE

Joann M. Murphy
34 Lake Shore Drive
Eastchester, New York 10709

Willow Lane Associates LP
c/o Joann M. Murphy
34 Lake Shore Drive
Eastchester, New York 10709

Dennis Capponi
10 Woodlawn Road
Putnam Valley, New York 10579

Country Bank
200 East 42nd Street
New York, New York 10017